

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING AND FRANCHISES
JOINTLY WITH
COMMITTEE ON TECHNOLOGY

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June 18, 2014
Start: 1:11 p.m.
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HELD AT: 250 Broadway-Committee Room
14th Floor

B E F O R E:
MARK WEPRIN
JAMES VACCA
Chairpersons

COUNCIL MEMBERS:
Annabel Palma
Ruben Wills
Steven Matteo
Vincent Gentile
Ritchie Torres
Karen Koslowitz

A P P E A R A N C E S (CONTINUED)

Raymond Mastroianni
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Jeremy Schneider
Chief Technology Officer
Alliance for Downtown New York

2 CHAIRPERSON WEPRIN: Okay, good
3 afternoon, everyone. Buenas tardes. You know, I
4 want to get with the program here. I want to
5 welcome everybody here this afternoon. This is a
6 joint meeting of the Zoning and Franchises
7 Subcommittee and the Committee on Technology.
8 Chair Vacca, who unfortunately, is in the middle of
9 a budget negotiating meeting, he said he'll be here
10 a little late and he said that we can start without
11 him, so we are going to do that. We are joined by
12 the following members of either Technology or
13 Zoning: Annabel Palma, Ruben Wills and Steve
14 Matteo at the moment.

15 This is an oversight hearing on a
16 recently issued RFP by DoITT, having to do with the
17 new generation of payphones. There has been
18 discussion about what the next generation is and
19 there's been some concerns raised about the RFP and
20 we wanted to have a discussion here today. So let
21 me give an opening statement and then we'll move
22 from there.

23 So as many of you know, a monopoly
24 existed in New York City payphones until August of
25 1995 and at that time, the city mandated a

2 competitive marketplace by enacting Local Law 68 of
3 1995 and in 1997, AR 2248, the City Council then
4 authorized DoITT to grant non-exclusive franchises
5 for the installation of payphones. DoITT, at the
6 time, recommended nearly 100 companies for approval
7 and the contracts became effective on October 5th,
8 1999 and are set to terminate in October of this
9 year, and that's what brought this whole RFP to
10 light now. At this time, there are 10 public
11 payphone franchises operating approximately 7,300
12 public telephones. As the use of cell phones has
13 become more and more prominent obviously, the use
14 of payphones has dropped dramatically and many of
15 the payphones have fallen into disrepair, as they
16 have not been used, many of which may actually
17 work, but they say they don't work and basically
18 what they are advertising space, currently used
19 throughout the city.

20 So to respond to this, in July of 2012,
21 the city did put out a Request For Information, an
22 RFI, as to whether current locations could be used
23 for other telecommunications convenience services.
24 The city received over 125,000 submissions of what
25 can replace the phones and 1,170 finalists were

2 selected and redesigns were submitted. We are very
3 excited about this; I was very excited about this.
4 I felt like it was a great thing as we move
5 forward, to come up with something that could be
6 useful to the public and can still offer you know,
7 a space for advertising, but at the same time, have
8 a service that the public can use and no longer
9 having the now abandoned payphones.

10 In April of this year, DoITT issued an
11 RFP that would transform and replace the outdated
12 payphones to newer telecommunication stations.
13 These hubs will provide telephone service and free
14 Wi-Fi 24 hours a day seven days a week, as well as
15 other services. The RFP indicates, however, that
16 the city will award a citywide contract to a single
17 franchisee to operate for 15 years. Now, this
18 provision raised some concerns about how selecting
19 one franchisee and how they will operate without a
20 competitive market. One of the concerns that I
21 have raised is the idea that without a competitive
22 market for the chosen franchisee, there's no
23 incentive for them to go above and beyond the
24 minimum service required in the RFP. Now, this is
25 especially troubling when we're talking about a

2 telecommunications device; modern technology. As
3 we all know, technology is changing hourly in this
4 city, in this country and in this world and the
5 services provided, in my mind, could be obsolete
6 within a year and then we're back to the same
7 problem we have now, where you have you know,
8 telecommunications stations that are just lying
9 there as advertising space and are no longer
10 serving a useful purpose. That could happen.
11 Furthermore, advertising, which is expected to pay
12 for the entire citywide build-out, you know, given
13 the start differences and ad rates in Manhattan and
14 in the outer boroughs where I represent and where
15 Council Member Vacca represents and as a matter of
16 fact, all the members of this committee at the
17 moment represent, are less likely to have those
18 prime advertising spaces and I can't help but
19 wonder what incentive the new franchisee, the
20 single sole franchisee will be given to ensure that
21 Queens, Brooklyn, Staten Island and the Bronx do
22 not get swept under the rug and get short shrift on
23 what services are being provided.

24 You know, historically, lawmakers have
25 found monopolies to be troubling and they

2 discourage... because they discourage competition,
3 thereby jeopardizing the quality of service.
4 That's why in 1995, the Council called for a
5 competitive marketplace; mandated a competitive
6 marketplace in all phone service. In 1996,
7 Congress made significant changes to the Federal
8 Telecommunications Act, which calls for a fair
9 market by prohibiting one entity from providing any
10 interstate telecommunications service. More than a
11 decade later, the City Council reaffirmed this
12 ruling when it passed AR 2309 and AR 191, both
13 which explicitly state franchises shall be non-
14 exclusive.

15 DoITT's RFP for a franchise potentially
16 violates the Telecommunications Act. I know there
17 is talk about that out there and I know they deny
18 that, but that is out there and is contrary to what
19 I believe is the City Council's legislative
20 history. It allows the government, not the free
21 market, to determine which telecommunications
22 services survive. This is why I have serious
23 concerns about this RFP and that's why we are here
24 today.

2 I want to let you know that we did have
3 conversations with DoITT about this hearing. They
4 were very cordial conversations. They had
5 expressed that they may not be able to answer all
6 the questions we had regarding this because there
7 is an outstanding RFP and then sometime between
8 that meeting they made a decision just not to come
9 at all, but they have submitted testimony, which I
10 have in front of me and it's two pages long and I
11 think I'm going to read it. I'm sorry, but I want
12 to read that into the record so everyone in this
13 room will know what DoITT... what their arguments
14 are so we can hear from them. So I apologize if
15 you're getting of hearing my voice, but I will try
16 to do this as quickly as possible.

17 This is a statement of the Department
18 of Information Technology and Telecommunications;
19 Assistant Commissioner Stanley Shor for the
20 Committee on Technology and Subcommittee on Zoning
21 and Franchises. It starts: in 1999, the New York
22 City Department of information Technology and
23 Telecommunications, DoITT, entered into more than
24 100 franchise contracts for the installation,
25 maintenance and operation of pay telephones on city

2 sidewalks. The remaining 10 of these franchises
3 will expire on October 15th, 2014.

4 The role of pay telephone service in
5 public communications has changed dramatically
6 since 1999. According to recent figures, 90
7 percent of American adults have a cell phone and
8 nearly 60 percent own a Smartphone. Even so, there
9 is still significant usage of sidewalk payphones to
10 place 9-1-1 calls and during Hurricane Sandy,
11 payphone use reportedly tripled in areas lacking
12 power. As such, communication services in public
13 spaces remain relevant today. Additionally, as in
14 the past, it is anticipated that there is the
15 potential to offer new communication services on
16 city sidewalks supported by advertising income. On
17 April 30th, 2014, DoITT issued a Request For
18 Proposal, RFP, to transform the city public
19 telephones into citywide networks of Wi-Fi hotspots
20 and state-of-the-art communication hubs, with the
21 goal of making information and communication
22 services in public spaces more accessible and
23 reliable. Responses to the RFP are due on July
24 21st, 2014 at 5:00 p.m.

2 The RFP is based on substantial input
3 from the public and interested parties, including a
4 widely publicized Request For Information on the
5 future of payphones, issued in July 2012 and the
6 subsequent Reinvent Payphones public design
7 challenge held in 2013. The RFP is structured to
8 allow a range of proposals, from relatively simple
9 designs to more elaborate, high tech communication
10 devices with a variety of services, offerings and
11 capabilities. In addition to 24/7 free Wi-Fi, the
12 communication structures will continue to offer
13 phone services, including free 9-1-1 and 3-1-1
14 calls. New services may also include cell phone
15 charging stations and touch screens that will
16 provide information and facilitate business
17 transactions. Additionally, these installations
18 could provide the city with an added means of
19 disseminating emergency notifications and
20 information during citywide events. Proposers are
21 also encouraged to include the use of independent
22 power sources, such as solar energy.

23 The city is looking to facilitate a
24 seamless network of Wi-Fi hotspots to offer New
25 Yorkers sidewalk internet access in all five

2 boroughs. According to studies by Nielsen and Pew,
3 nearly 60 percent of US adults own a Smartphone and
4 adoption is increasing at a rapid pace. Smartphone
5 ownership is higher than average amongst African
6 American and Hispanic groups, as well as
7 individuals ages 18 to 29. For young adults with a
8 household income of \$30,000 or less, Smartphone
9 ownership rates are equal to the average. More
10 than a quarter of Smartphone users rely on their
11 devices and personal cellular data as their primary
12 means of getting online. Groups more likely to say
13 that they mostly go online using their Smartphones
14 include individuals under the age of 30, non-white
15 users and Smartphone owners with relatively low
16 income and education levels. Providing free
17 wireless web access in public spaces to individuals
18 who might lack access to affordable alternatives is
19 an important step in enhancing digital inclusion
20 across our city.

21 There are currently 10 franchisees
22 operating approximately 9,000 public pay telephones
23 on New York City sidewalks using equipment of
24 varying age, function, design and reliability. To
25 provide the most innovative, effective and

2 efficient new public services, the city is
3 currently expecting to award one franchisee
4 contract onto the RFP. Awarding a franchise to a
5 single entity, which may be a joint venture or
6 partnership among different companies, among
7 competing proposers is intended to maximize the
8 resulting public benefits, including continuous Wi-
9 Fi access so that individuals are able to stay
10 connected to an integrated system as they travel
11 through the five boroughs; consistent design
12 interface landing page and log in elements that
13 will provide a user-friendly experience. Next,
14 avoidance of unnecessary sidewalk clutter resulting
15 from multiple providers seeking access to the same
16 prime advertising panel locations and finally, on
17 this list network scale sufficient to incentivize
18 proposals for initial capital and ongoing
19 investments that will maximize the benefit to the
20 public. In addition to the proposals from
21 individual operators, the city encourages companies
22 to form joint ventures and other types of
23 partnerships for the purpose of submitting
24 proposals and the subsequent operation of a
25 franchise.

2 Designs will be evaluated on the basis
3 of functional efficiency; aesthetics; security;
4 durability; adaptability for various environments
5 around the city, including historic districts and
6 individual landmarks and accommodating people with
7 disabilities. Preference will be given to
8 proposals that demonstrate the greatest public
9 benefit from the services and the local economic
10 opportunities presented by this initiative. In
11 addition to the creation of new jobs for the
12 development servicing and maintenance of these
13 communication structures, the city expects that the
14 services themselves will help support job seekers;
15 freelancers; residents in need of affordable
16 broadband services; small businesses and local tech
17 industry and visitors.

18 The winning proposal... almost done.
19 The winning proposal will provide for the
20 installation, operation and maintenance of up to
21 10,000 public communication points distributed
22 across the five boroughs. These structures will
23 replace and supplement the roughly 7,000 current
24 public payphone installations across New York City.
25 The franchise will produce at least \$17.5 million

2 in guaranteed annual revenue for the City of New
3 York. For more... alright, I don't need to say
4 that, huh? Okay well, they do say for more
5 information you can download the RFP at DoITT's
6 website. Thank you for the opportunity to submit
7 this testimony.

8 Thank you. I appreciate your patience.
9 I think it was important that we get that on the
10 record. So what we have... [off mic] six, right?
11 We have six people here to testify now that DoITT
12 is not here. We'll get into some of the questions
13 about DoITT's proposal, but what we'll do is we're
14 bring them up three at a time since as luck would
15 have it, we have three chairs and so we will call
16 our first panel, which is going be Robert Scott,
17 Robert Brille and Raymond Mastroianni...
18 Mastroianni. And we've been joined by Council
19 Member Vincent Gentile.

20 [Pause]

21 CHAIRPERSON WEPRIN: Gentlemen, I just
22 want to make sure that when you speak, please state
23 your name, but we're going to have you each go one
24 at a time and then we'll take questions from the
25 panel that could go to any one of the three of you,

2 if that's okay. So you guys decide who goes first.

3 Just make sure to state your name whenever you

4 speak so the record will be clear as to who's

5 speaking. Thank you. Whenever you're ready.

6 [Pause]

7 CHAIRPERSON WEPRIN: Now say testing

8 one, two, three, four. No, one more time.

9 [background voices] That's... one... one push.

10 [laughter] Now, now.

11 RAYMOND MASTROIANNI: Oh, it's in the

12 back.

13 CHAIRPERSON WEPRIN: There you go.

14 RAYMOND MASTROIANNI: My name is Ray

15 Mastroianni and I'm the CEO of Telebeam

16 Telecommunications. [background voices]

17 CHAIRPERSON WEPRIN: Well, I'll tell

18 you what to do. Instead of introducing you,

19 alright, well like each introduce yourself and then

20 we'll have you each do testimony if you want. Go

21 ahead, Mr. Brill.

22 ROBERT BRILL: My name is Robert Brill.

23 I'm an attorney here in New York City. I've

24 testified before this committee and Chair Vacca's

2 committees when it was under different management
3 basically since 1994.

4 CHAIRPERSON WEPRIN: Okay, glad to have
5 you back.

6 ROBERT BRILL: Thanks.

7 ROBERT SCOTT: Hi, I'm Robert Scott, a
8 lawyer with the firm Davis, Wright, Tremaine from
9 Washington, DC. I am a expert in communications
10 law and I've come up here to talk about DoITT's
11 monopoly proposal.

12 CHAIRPERSON WEPRIN: Great. So who
13 wants to start and give testimony? Okay, alright.

14 RAYMOND MASTROIANNI: Okay. Good
15 afternoon, Chairman Weprin and distinguished
16 members of the City Council Subcommittee on Zoning
17 and Franchises and the Technology Committee. As
18 mentioned, my name is Ray Mastroianni and I'm the
19 Chief Executive of Telebeam Telecommunications. We
20 are a proud Queens company and hold a franchise for
21 900 public pay telephone kiosks across the city.

22 Thank you for inviting us to address an
23 issue I believe has important long-term
24 ramifications for the City of New York and its
25 people; that is, the attempt by the City's

2 Department of information Technology and
3 Telecommunications to force through a deeply flawed
4 RFP for franchise rights to payphones and free
5 public Wi-Fi hotspots across the city.

6 In its current form, the RFP favors
7 large companies and will drive existing small
8 business franchisees out of business. The RFP
9 ensures there will be only one provider who will
10 then have a monopoly on public technology resources
11 and access to those resources. It is a simple fact
12 that competition breeds innovation. Monopolies, on
13 the other hand, are the enemy of innovation because
14 monopolies are about making the most money and not
15 necessarily delivering the best services and
16 offering, especially to underserved communities.

17 DoITT is now moving in the polar
18 opposite direction of the Council and Congress's
19 original intent when they ended the monopoly.
20 Instead of non-exclusive franchises the City
21 Council mandated with AR 2248, the new RFP provides
22 for the selection of a single provider, the winner
23 will gain a monopoly of over 4,000 current payphone
24 locations and propose up to 6,000 additional
25 locations outside Manhattan.

2 It gets worse. According to the terms
3 of the RFP, all existing franchisees will be
4 required to transfer their assets to the new
5 monopoly, so where does this end and why just this
6 industry? For example, the broadband industry and
7 the cable industry sign similar agreements. They
8 have a finite term within their franchise. So
9 would this new monopoly approach in other words, go
10 out to the highest bidder for cable services and do
11 one provider citywide for cable services? And
12 let's say you'd score higher for companies that had
13 let's say fiber optic cable, so would they then do
14 a taking and say okay, the winner, whoever bids the
15 most, would then be able to you know, take away...
16 you know, if Verizon won, take away Time Warner's
17 or Cable Vision's infrastructure that they
18 invested? Who would ever want to invest in
19 infrastructure in New York City if something like
20 that were to happen? But it just seems like it's
21 focused just on this business for some reason. We
22 have to figure that one out.

23 Putting aside for a moment that this
24 RFP runs afoul of the Telecommunications Act, it
25 sends a chilling message to smaller technology

2 companies. Why would they even consider investing
3 in New York City if their assets are subject to
4 taking, even when they have operated in good faith,
5 followed the rules and regulations and are not in
6 default? [background voices]

7 The RFP is very clear that all current
8 franchisees would be forced to sell only to the
9 winner of the incoming contract. There are no
10 other options. Franchisees would only receive
11 pennies on the dollar for their businesses,
12 franchises and above ground and below ground
13 technology and equipment. Before when... when Mr.
14 Shor read his comments about joining... like doing
15 joint ventures, if I approach one of the
16 advertising companies and say listen, why don't you
17 do this with us, my company would be competing with
18 them. Why would they want to do a submission with
19 Telebeam? They'd want to do it on their own and
20 not have another competitor. It doesn't make any
21 sense to do a joint venture.

22 CHAIRPERSON WERPRIN: You've sort of
23 saying you wouldn't want to do a joint venture
24 until you know you weren't the winning bidder and
25 what it is...

2 [crosstalk]

3 RAYMOND MASTROIANNI: Exactly.

4 [crosstalk]

5 CHAIRPERSON WEPRIN: If you knew they'd
6 go hey, wait, wait, let's make a deal!

7 [crosstalk]

8 RAYMOND MASTROIANNI: Well, I had... 15
9 years ago I had more advertising friends...

10 [crosstalk]

11 CHAIRPERSON WEPRIN: You wouldn't know
12 who to make the deal with.

13 RAYMOND MASTROIANNI: Oh, absolutely.

14 CHAIRPERSON WEPRIN: Uh-huh.

15 RAYMOND MASTROIANNI: When they had a
16 media rep concept because advertising is a
17 commodity. There are some terrific large companies
18 that can do a fine job, but they went... this thing
19 was designed so that unless you're an advertising
20 company; even an advertising company, they
21 couldn't... you can't build a network without
22 advertising revenue. It's not... there's no
23 specialty to this. It's a commodity and there are
24 a number of advertising companies very capable of
25 doing this. Why just have one?

2 So some may be asking why this is
3 important. After all, we're only talking about
4 payphones. Most people have a cell phone and
5 public phones are increasingly irrelevant. Nothing
6 could be further from the truth. Where some see a
7 simple payphone kiosk, we see interactive multi-
8 media portals that provide affordable worldwide
9 calls and access portals to the internet emergency
10 services and a charging depot for both mobile
11 devices and electric vehicles. We can equip our
12 kiosk with street facing video cameras to assist
13 with public safety efforts. We can install
14 electronic thermometers capable of detecting an
15 increase in temperature in the surrounding air
16 temperature that may indicate a nearby explosion of
17 a building or a fire and alert the authorities to
18 an alert.

19 I know that the members of the Council
20 are eager to see Wi-Fi made available at every
21 corner of the five boroughs. Telebeam already
22 offers free Wi-Fi through 20 of our locations.
23 Yes, free Wi-Fi to local communities. The
24 payphones of yesterday are evolving into smart
25 communication centers of tomorrow. It's critical

2 for the future of New York City that we get this
3 right, yet DoITT seems eager to push through this
4 RFP, which was originally developed by the
5 Bloomberg Administration, without consideration for
6 the best results and would be with little input or
7 no input from the City Council.

8 You know, DoITT had a question and
9 answer meeting a few weeks ago and I asked Mr. Shor
10 and Mr. Regal what's the rush in terms of... I mean
11 to get this... to get a design, a structural
12 engineering has to get done; architectural designs;
13 all the technologies; getting it put together when
14 you just released this footprint so we know what it
15 is. It took Apple three years and they put 1,000
16 employees on the iPhone, so really this is going to
17 be a 15-year franchise and you want to give us six
18 weeks to figure this all out? Hmm...

19 CHAIRPERSON WEPRIN: I'd like to get to
20 the other panelists, so will you wrap up...

21 RAYMOND MASTROIANNI: [interposing]
22 Sure.

23 CHAIRPERSON WEPRIN: And then we can
24 hear from them and then there'll be some questions
25 after.

2 RAYMOND MASTROIANNI: Okay, I have some
3 slides I'd like to... is that... if...

4 CHAIRPERSON WEPRIN: Is it set up? Is
5 it queued up to see? Do you want to wait...

6 [crosstalk]

7 RAYMOND MASTROIANNI: No, I... they're
8 physical slides.

9 CHAIRPERSON WEPRIN: Okay.

10 RAYMOND MASTROIANNI: Do you want the
11 other panelists...

12 [crosstalk]

13 CHAIRPERSON WEPRIN: Fine.

14 [crosstalk]

15 RAYMOND MASTROIANNI: To go first?

16 [crosstalk]

17 CHAIRPERSON WEPRIN: Why don't we let
18 them speak...

19 RAYMOND MASTROIANNI: [interposing]
20 Sure.

21 CHAIRPERSON WEPRIN: And then you can
22 just get that ready and then we can show it you
23 know, afterwards, okay, 'cause I want to get to the
24 other panelists as well. Who wants to go next?
25 Okay, again, make sure to state your name.

2 ROBERT SCOTT: Testing. Hi, this is
3 Robert Scott and again, I'm with the firm Davis,
4 Wright, Tremaine. I'm a partner in that firm.
5 I've been a specialist in communications law for
6 over 25 years. I was a co-chair of my firm's
7 Communications Department for a number of years and
8 I've represented cable operators,
9 telecommunications providers, payphone providers,
10 Wi-Fi providers; you get the picture; for a long
11 time. I have real special expertise though in the
12 laws that affect these companies use of public
13 rights-of- way and franchising and in fact,
14 municipal rights-of-way is one of my real
15 specialties. I've testified before a number of
16 other government bodies over the years and I have
17 litigated many cases with my clients against cities
18 on the federal law, especially that regulate what
19 cities and states can and can't do in this space.
20 I was also lead counsel in a landmark case in the
21 Second Circuit, which governs the New York PCG
22 versus the City of White Plains, which set the
23 framework for Section 253 of the Communications
24 Act, which I'm going to talk about in a minute.

2 So I wanted to just briefly address how
3 DoITT's plan to replace a competitive market with a
4 monopoly market runs afoul of the federal law and I
5 expect to submit written comments afterward. I did
6 not have time to prepare something and I don't want
7 to go into great detail here.

8 So we've already heard from the Council
9 and you're well aware that the monopoly status of
10 payphones and telecommunications before 1995 was
11 replaced and thrived and here we are 20 years
12 later, having had seen it grow without monopoly and
13 see it thrive and see it get to the point that
14 we're at today. That was the goal of this Council;
15 that was the goal of the city; that was the goal of
16 the Congress and the Federal Communications
17 Commission.

18 Section 253 of the Communications Act
19 is central to the whole idea of ending the state
20 sanctioned monopolies and that provision says that
21 no state or local law may prohibit or have the
22 effect of prohibiting any entity from providing any
23 telecommunications services. So it's a very broad
24 prohibition on local and state laws that would have
25 a monopoly. Despite the plain meaning of that

1 statute, DoITT seems intent on evicting all
2 competitors today and replacing them with a
3 monopoly, a government sanctioned monopoly to
4 provide payphone service, as well as those other
5 services that might be provided through those
6 structures. So they want to set the clock back to
7 1990 or 1992, which is a direct violation of
8 Section 253. Now, that law has a safe harbor for
9 certain government actions that allow some local
10 laws that would otherwise be prohibited to stand
11 and that exception for local governments is to
12 manage the public rights-of-way or require fair and
13 reasonable compensation from telecommunications
14 providers on a competitively neutral and non-
15 discriminatory basis for use of public rights-of-
16 way on a non-discriminatory basis. So the whole
17 concept of monopoly can't be squared with a
18 provision that requires competitively neutral and
19 non-discriminatory regulation. DoITT proposes to
20 eliminate all competition, giving only one provider
21 all of the benefits.
22

23 So I want to quickly just touch on
24 three cases as short as I can that have dealt with
25 this monopoly idea since that 1996 Act 'cause

2 they're key. One of the earliest was, in fact,
3 involving payphones at the Federal Communications
4 Commission because at one point, DoITT said well,
5 payphones aren't telecommunications; they're
6 advertising. The FCC looked at payphones and said
7 well, the state of Connecticut wanted to allow only
8 the incumbent local exchange companies; New York
9 Telephone here; I think it was Southwestern or New
10 England Tel and the FCC said... they tried to
11 justify it on the grounds that we have to protect
12 the consumers from these new guys who aren't as
13 well established as the big guys and the FCC said
14 well no, Congress has decided that competitive
15 markets will best serve the public interest and the
16 interest of consumers, so they struck it down.
17 That's already been decided.

18 The second case was one in the Midwest
19 where cities wanted to get their own
20 telecommunication system going and refused to issue
21 or renew franchises that company had had and it
22 bought the facilities and the FCC said
23 unequivocally that's a violation of this Act. You
24 can't just kick them out. It's against the law.
25 If DoITT refuses, I think it's the same result.

2 And the third case that's really
3 interesting to this situation occurred right across
4 the Hudson in West New York, New Jersey; the town
5 of West New York. The town intended to auction off
6 the right to provide payphone service in different
7 zones of the town and much like DoITT, they were
8 planning to award one franchise for each area based
9 on an evaluation of which bid was the best for
10 their criteria that they had established and the
11 Court of Appeals in Philadelphia found that that
12 exclusive franchise scheme was a violation of this
13 Law 253 of the Communications Act and that there
14 could be no question that this reduced competition
15 was a barrier to entry.

16 So there's no daylight between what
17 DoITT is proposing here and the town of New York
18 case that I can see, so that's the key takeaway I
19 think for here. DoITT's made a lot of arguments
20 over the years about its power that strained the
21 meaning of these laws and that's fair. We're in
22 litigation and advocating, but this is a new ground
23 they're staking out and I think that's probably
24 enough for this panel.

2 I would like to submit the rest of my
3 comments in writing or answer any questions because
4 that's the law in summary...

5 [crosstalk]

6 CHAIRPERSON WEPRIN: Mm-hm.

7 ROBERT SCOTT: But I have to say that
8 really is the policy that works and you can tell by
9 what we've heard here today that the market's have
10 gone up and down for different telecommunication
11 services, including payphone services in the almost
12 20 years since these policies became law, but they
13 have worked. We have seen incredible growth in the
14 type of services that these types of companies can
15 deliver to consumers and that's through renovation
16 and competition and not through monopoly.

17 CHAIRPERSON WEPRIN: Great.

18 ROBERT SCOTT: So I'll reserve...

19 [crosstalk]

20 CHAIRPERSON WEPRIN: Well, let's hear
21 from Mr. Brill. There will be some questions.

22 ROBERT BRILL: I want to thank the
23 committees, Chair Weprin, Chair Vacca. This is an
24 absolutely essential hearing. I've submitted
25 written testimony. I'm only going to summarize it

2 here and speak extemporaneously the key notes of
3 the various issues, but first and foremost, having
4 watched Assistant Commissioner Shor under your
5 questioning on May 22nd at the DoITT budget
6 hearing, we now have expressly on the record that
7 they intend to impose upon the City of New York and
8 telecommunications in this payphone Wi-Fi type of
9 service a monopoly, so it's expressed that's their
10 intention, no other questions asked. You've heard
11 Mr. Scott speak to the federal law. Let me speak
12 to the city law if I can.

13 I believe that what they're doing on
14 the face of the RFP; I think it's page three, is
15 ultra vires under the Charter. They haven't come
16 to you folks, as the Charter mandates in the
17 franchise chapters, for a new authorizing
18 resolution for this conglomerate of various things
19 in telecommunications on the city side of what's
20 the inalienable property and they have to. The
21 Charter is express on this. What have they done?
22 What have they said? Well, they said we're taking
23 the mobile telecommunications authorizing
24 resolution. We are taking the presently extant
25 payphone authorizing resolution, which will expire

2 sometime I think in December of 2014 and Local Law
3 68 of 1995. Now, if you look at those RFPs, they
4 all acknowledge the federal law and they basically
5 say expressly DoITT may not engage in things which
6 violate the federal law. It's a pro-competitive...
7 those are pro-competitive authorizing resolutions.
8 Local Law 68 of 1995, which amended the
9 Administrative Code, mandated competition between
10 Verizon, the incumbent, and all of the independent
11 providers. It was part of this Council's process
12 of enacting genuine competition, so I think that
13 the Council needs to assert its rights. Now, they
14 haven't sent you a letter asking for an authorizing
15 resolution. Does that mean you're powerless? No,
16 and I have submitted to you with my written
17 testimony exhibits, which are proposed legislation
18 that you have the power right now to enact to stop
19 this and to impose what the Council intended
20 originally, which was a competition, no barriers to
21 entry marketplace. Now, I want to say before I get
22 into the legislation, everything that Assistant
23 Commissioner Shor said for his agency in his
24 testimony about the things that they want, which he
25 said you know, is only monopoly-driven I have given

2 him my written testimony. That's nonsense. Every
3 one of those items, including the revenue stream,
4 including the Wi-Fi service, including the 24-hour
5 and all of that stuff and including traditional
6 payphone service can all be delivered by a
7 competitive model and how do we know? Because
8 Assistant Commissioner Shor, in answering your
9 questions at the pre-bid conference and in the RFP
10 itself, says one of the reasons we know we can pull
11 this off is because we've had a pilot project in
12 place, a competitive model with three of our
13 existing franchisees and it works. Huh? If it
14 works; if it ain't broke, don't fix it.

15 The Mayor gave a speech, and I have
16 given you all the citations to it and you can watch
17 it on the web, and he said competition is essential
18 for innovation in telecommunications and in
19 technology and he especially said it's very
20 important in broadband. Well, why do we have a
21 monopoly then? How is that going to effectuate
22 your policies? Two days later, a public forum; you
23 can watch it on the web; I've given you the
24 citations; I challenged Counsel Maya Wiley on this
25 very point. So she did the same tap dance and

2 dodge that they to you, Chair Weprin, on May 22nd
3 at the hearing: oh, we have an RFP; we can't you
4 know, respond 'cause I was asking her, "Can you
5 make the points as to why you think monopoly is
6 either better to deliver all these services or is
7 somehow something that competition fails at and
8 monopoly can deliver?" They wouldn't do it. So
9 now, later on though she did say that she very much
10 was thinking about the old style state-owned
11 monopolies as the way to perhaps get innovation in
12 telecommunications. I've given the citation to the
13 landmark decision breaking up the Bell system in
14 1983 with Judge Green; 100 pages; it's still a
15 beautiful decision and he basically knocks down
16 every argument for monopoly in technology and
17 innovation. From 1914 to 1983, monopoly was the
18 rule of thumb; 1983 to date, competition is the
19 rule of thumb. Well, that's why we have internet
20 expansion, Wi-Fi, broadband, all the great things
21 that we love today.

22 So how does the Mayor propose that this
23 is the way to accomplish this? This is a Bloomberg
24 Administration type of policy. I'm shocked that
25 Mayor de Blasio wants to continue it and I suspect

2 that he hasn't been really informed of what's going
3 on. This Council has the power to impose
4 competition, which it already has, and to enforce
5 it. I just want to key note my three pieces of
6 legislation. One, amending the Administrative Code
7 provision under Local Law 68, in which the mandate
8 you apply to Wi-Fi as well as payphones; that
9 basically you say to the DoITT Commissioner, "If
10 you have a monopoly, you can't issue a permit," and
11 you also do that to DOT; no pipes in the ground for
12 this type of... this RFP without it being
13 competitive and without it being in a court with no
14 barriers to entry. You don't sacrifice VENDEX,
15 which is you know, no one's challenging. You don't
16 sacrifice siting criteria. When Mr. Shor speaks
17 about the siting criteria, they have it now;
18 they've amended it in the past. You can always
19 have siting criteria.

20 Second piece of legislation: to amend
21 the presently existing authorizing resolution that
22 they're basing it on to again, put in all those
23 competitive values, but make it firm and strong, no
24 monopoly and that means no RFP. It means no award.
25 It means the FCRC can't approve a contract.

2 Finally, I've given you a piece of
3 legislation, a local law, which, in effect, says no
4 contract may be entered into for such a franchise
5 that, in effect, imposes a monopoly. That, in
6 effect, is a direction to the FCRC as to what the
7 Council wants, so I think that you know, you have
8 the power and I hope you will use it and stop what
9 is a train wreck about to happen. All the things
10 that DoITT and the Mayor want, they can get and
11 we....

12 [crosstalk]

13 CHAIRPERSON WEPRIN: Mm-hm.

14 [crosstalk]

15 ROBERT BRILL: Have it presently.

16 CHAIRPERSON WEPRIN: Let me... Mr.

17 Mastroianni, before we get to your slide, I wanted
18 to just ask a couple of questions. We've been...
19 by the way, we've been joined by Ritchie Torres
20 from the Bronx also, another outer borough guy.
21 And first let me ask this question and then I want
22 to address... you asked you know, why does the city
23 want to have a monopoly? They state some reasons
24 here and I'd like to ask you about those, but
25 before we do that, do you agree that creating

2 competition would make it more likely that there
3 would be upkeep and improvements in these Wi-Fi
4 stations as the contract continues?

5 ROBERT BRILL: Absolutely and the
6 reason is because as the model has shown now, for
7 most of the providers, that you want people to come
8 and use your kiosk; your station. If it's the
9 passive advertising, you want the eyeballs there.
10 If it's the Wi-Fi services with the other things,
11 in which there will be a lot of interactive type of
12 services, you want an attractive spot and I do
13 think that... I can only speak to two clients of
14 mine presently, Van Wagoner and Telebeam; I've
15 represented others as well. They make it wherever
16 they can to try and do that with their sites. Now,
17 I know that the old Verizon sites... Verizon, which
18 was a monopoly and then didn't want to be in the
19 business, allowed its physical plant to
20 deteriorate, so there's been some acquisitions in
21 the marketplace. It's very tough to, in effect,
22 get water or blood out of a stone, so to some
23 extent, gradually if the providers are given the
24 opportunity, they're going to improve what was the
25 old Verizon plant. But the bottom line is if

2 you're going to make money from these sites and the
3 city wants to have more money; it's proposals that
4 they want to make greater commission, so the answer
5 is absolutely, you're partners, the city and the
6 providers. So the answer is yes, but I agree with
7 you, as your comments before. Monopoly is not
8 going to deliver that.

9 CHAIRPERSON WEPRIN: Well, let me talk
10 about some of things that monopolies, according to
11 DoITT, why it's important to have this sole
12 provider. We're joined by Council Member Karen
13 Koslowitz, by the way, another Queens person. They
14 say continuous Wi-Fi access will be... because of
15 the monopoly they'll have continuous Wi-Fi access
16 so individuals are able to stay connected in an
17 integrated system throughout the boroughs. Is
18 there any reason to think that if you had more than
19 one provider you wouldn't be able to have Wi-Fi;
20 continuous Wi-Fi access throughout the city?

21 ROBERT BRILL: I think someone is in
22 the...

23 [crosstalk]

24 CHAIRPERSON WEPRIN: Okay.

2 RAYMOND MASTROIANNI: No, it's the
3 standard. The city would have to mandate a
4 standard and that is if what the city is intending
5 is for people using the hotspots to have a
6 uninterrupted experience; to go from one hotspot to
7 the next, there has to be a standard; hotspot 2.0;
8 whatever it is and that should be a requirement of
9 the franchise; of your contract.

10 CHAIRPERSON WEPRIN: [interposing]
11 Right.

12 RAYMOND MASTROIANNI: So why have all
13 your eggs in one basket?

14 CHAIRPERSON WEPRIN: Okay well, how
15 'bout the idea that consistent design, interface
16 landing page and log in elements will provide a
17 user friendly experience? Don't you want the
18 public to know that this is how these work and
19 they're all the same; I mean they're all similar so
20 you don't have to go from one and then do a
21 different type of log in?

22 RAYMOND MASTROIANNI: Again, if it's to
23 authenticate one time, so if you're on Steinway
24 Street in Astoria and you walk down to Broadway and
25

2 on Steinway Street you've come into a Van Wagoner
3 hotspot...

4 CHAIRPERSON WEPRIN: [interposing] Mm-
5 hm.

6 RAYMOND MASTROIANNI: And you
7 authenticate; pledge page comes up, you press a
8 button and now you have access. There's no reason
9 why, particularly if the access points are talking
10 to one another, that when they come into a Telebeam
11 hotspot that they're seamless. They don't have to
12 authenticate; re-authentic again.

13 CHAIRPERSON WEPRIN: Mm-hm. I guess
14 it's not so different than ATM machines from
15 different banks. People tend to figure out how to
16 use them. They're not that different in you figure
17 out when you put your code in by when you prompt
18 it. Third, avoidance of unnecessary sidewalk
19 clutter resulting from multiple providers seeking
20 access to the same locations. Now, aren't you
21 assigned locations? Wouldn't that also be part of
22 the contract? I didn't get that one.

23 RAYMOND MASTROIANNI: Yeah.
24
25

2 CHAIRPERSON WEPRIN: How does that
3 work? I mean would everyone be fighting over the
4 same locations? Do they do that now?

5 RAYMOND MASTROIANNI: No, out of the 10
6 companies that operate their network work standard;
7 that operate their networks now, they all... we all
8 have a kiosk so the idea would be that the city
9 choose one design if that's what they want. Pick a
10 design, an aesthetic design; for example, the
11 existing franchisees should be required to hire
12 their designers, to put forth a design to go to the
13 Design Commission and get voted on and whatever
14 design wins, that's the design you use. So it
15 could be a slim design, but we have no direction
16 either from the agency on what they...

17 [crosstalk]

18 CHAIRPERSON WEPRIN: Right.

19 [crosstalk]

20 RAYMOND MASTROIANNI: Would like to see
21 this look like.

22 CHAIRPERSON WEPRIN: Mr. Brill and then
23 I want to have some other people ask some
24 questions.

2 ROBERT BRILL: You know, the Council
3 passed Local Law 68. DoITT issued siting criteria.
4 They mandated a process. People then applied for
5 sites. DoITT basically made a rule, which was a
6 First in Time rule on applications for particular
7 sites, but it had... they looked at the
8 applications. This goes back to the middle '90s;
9 did it meet the siting criteria? First in Time if
10 it did and you paid your fee, you got the permit.
11 If somebody fails in the application process, they
12 go to the next person in the time slot and they got
13 the permit. Now, it's demonstrated that there's
14 not fighting for particular sites. They have had
15 the permit process. The issue is if the Mayor and
16 the city desire quickly seamless Wi-Fi, which you
17 need to do, which this Council did in Local Law 68
18 of 1995, is you basically say the incumbents can
19 stay in place; the new entrance, if there are any,
20 either can apply for available sites with the new
21 entrance based on promulgated known siting
22 criteria...

23 CHAIRPERSON WEPRIN: [interposing] Mm-
24 hm.

2 ROBERT BRILL: With a rule...
3 everything is laid out for what everybody has to
4 do. The notion that there aren't more sites to be
5 done is nonsense. DoITT and the Law Department
6 have a freeze on the core of Manhattan for new
7 available sites I think since 2005. We know the
8 other boroughs there's plenty of available sites.
9 DoITT has not encouraged getting out there to the
10 new neighborhoods. So I think new entrance will
11 find plenty of stuff to do. You preserve the old
12 entrance. Everybody wants to get the Wi-Fi because
13 there's I think some...

14 [crosstalk]

15 CHAIRPERSON WEPRIN: Right.

16 [crosstalk]

17 ROBERT BRILL: Money to be made for
18 all, so...

19 CHAIRPERSON WEPRIN: [interposing]
20 Well...

21 ROBERT BRILL: You have a model.

22 CHAIRPERSON WEPRIN: Even if they...

23 [crosstalk]

24 ROBERT BRILL: You enact it.

25 [crosstalk]

2 CHAIRPERSON WEPRIN: Even if they
3 decide to scrap all the sites and say I was
4 starting from... everyone's building new things
5 anyway, all these are up for grabs, couldn't you do
6 it in a like sort of a draft choice system where
7 hey, you got the first pick; you get the second
8 pick and then you can go around and divvy them up
9 that way or some way to assign them? I mean it's
10 not like people are going to be sitting there
11 battling and start building on the same site,
12 right? I mean there will be...

13 ROBERT BRILL: [interposing] Right.

14 CHAIRPERSON WEPRIN: Some type of
15 format for how you select sites. Just quickly I
16 know...

17 [crosstalk]

18 ROBERT BRILL: Yeah, yeah, yes.

19 [crosstalk]

20 CHAIRPERSON WEPRIN: 'Cause I want to
21 get to other people, but...

22 RAYMOND MASTROIANNI: [interposing]
23 Chairman Weprin, it's no different than the cable
24 franchise.

2 CHAIRPERSON WEPRIN: [interposing] Mm-
3 hm.

4 RAYMOND MASTROIANNI: At the end of
5 their franchise when you say after the cable
6 companies or the broadband companies invested
7 millions of dollars; let's put it up for grabs.
8 Now, just start... you know, take their investment
9 and let others now have access to it. That's the
10 problem. Companies that made the investment...
11 this is no different. When Verizon moved from a
12 licensed system and came into a franchise system,
13 no one took away their assets. No one said let's
14 divide up the Verizon pot for everyone to go and
15 share in. Verizon got to keep their network, so
16 you know we spent \$25 million building our network
17 and you know, the notion that someone should be
18 able to take it away and give it to my competitor,
19 that's not fair.

20 CHAIRPERSON WEPRIN: Right.

21 ROBERT BRILL: If I can just add to
22 that.

23 CHAIRPERSON WEPRIN: Quickly.

24 ROBERT BRILL: The Mayor and I think
25 everyone would like to deploy as quickly as

2 possible Wi-Fi service. You have three providers
3 who have done so and have been asking for years of
4 DoITT to have a broader based dissemination. So if
5 you want to achieve that objective and do it
6 quickly, I think that the Local Law 68 model, which
7 was to allow the incumbent to get permits for spots
8 and the policy intention, by the way, and Member
9 Koslowitz was on the Council at that time and knows
10 they wanted to keep whatever 9-1-1 service and...

11 [crosstalk]

12 CHAIRPERSON WEPRIN: We will hear from
13 her next.

14 [crosstalk]

15 ROBERT BRILL: Whatever they had.

16 CHAIRPERSON WEPRIN: Yes.

17 ROBERT BRILL: So I think if you want
18 to achieve and harmonize the policy objectives,
19 which is the speed of Wi-Fi rollout, they can do it
20 right now from their existing kiosks and...

21 CHAIRPERSON WEPRIN: [interposing] Mm-
22 hm.

23 ROBERT BRILL: So you want a balance
24 and I think that's the way you strike the balance,
25

2 but you allow new entrants to come in and to apply
3 for new sites.

4 CHAIRPERSON WEPRIN: Let me... just to
5 be fair, I want to give that last argument, and
6 this one actually makes more sense to me, is the
7 idea that network scale sufficient to incentivize
8 proposals for initial capital and ongoing
9 investment will maximize benefit to the public.
10 They're saying basically creating a monopoly will
11 raise the prices of advertising so if you want to
12 buy advertising you could only deal with this one
13 company, so you can't bargain for a lower price.
14 Now, I'm not sure if that's a good thing or not; if
15 that's a fair thing that we're looking to try to
16 elevate prices by creating a monopoly. That's
17 generally nothing I don't usually like when it
18 comes to consumer products, so I'm not sure it's
19 fair here, but I think the city's saying they can
20 make more money if there's only one.

21 RAYMOND MASTROIANNI: How would...
22 how... so for example, so if I just told the city
23 that alright, Telebeam is going to pay you the most
24 money; give us the franchise; we're going to pay
25 the most money, wouldn't the city say well, how do

2 we know you're going to pay us the most money? It
3 all comes down to a minimum guarantee.

4 CHAIRPERSON WEPRIN: Mm-hm.

5 RAYMOND MASTROIANNI: So if the city's
6 getting a minimum guarantee; if it's \$20 million
7 why couldn't... a minimum guarantee can only come
8 from one company?

9 CHAIRPERSON WEPRIN: Mm-hm.

10 RAYMOND MASTROIANNI: The monopoly only
11 favors the advertisers. It's not going to help the
12 city, so you can't take \$20 million and get \$5
13 million from four companies? If they don't...

14 [crosstalk]

15 CHAIRPERSON WEPRIN: Well...

16 [crosstalk]

17 RAYMOND MASTROIANNI: If they can't
18 compete they shouldn't be in the business. They
19 complain when they're out of... when they don't
20 have a monopoly... those who didn't have when there
21 was a monopoly complained about competition. Now
22 when they see they can go in and do a land grab and
23 take away valuable assets, they'll make that
24 argument and it fails. You can... the city can be
25 safe. Get a minimum guarantee and you can get it

2 from four companies; you can get it per panel.

3 That's a medium or a large company that...

4 [crosstalk]

5 CHAIRPERSON WEPRIN: Okay.

6 RAYMOND MASTROIANNI: Whispering in
7 their ears.

8 ROBERT BRILL: Just to follow up, in my
9 written testimony, I have proposed a system by
10 which the city it's per panel or per permit can get
11 a minimum guarantee, but also I think that what's
12 lost here about advertising, putting aside all the
13 law, there's an anti-trust... there's a whole slew
14 of different anti-trust cases about advertising and
15 the Justice Department has many cases and I can
16 provide it to the committee so you can see
17 competition is required after immediate display.
18 The Justice Department usually is the one enforcing
19 that, but it seems to me that the advertisers
20 looking at where they want to advertise decide on
21 if they want a site, a neighborhood, let's say.
22 Let's take Queens; particular neighborhoods; my old
23 neighborhood, Forest Hills, Kew Gardens in those
24 days, okay, so like Vita Herring they would want to
25 be there advertising 'cause they know they got a

2 ready market to buy in. They don't want let's say
3 other places, so if there's a provider and there's
4 an advertising company and they got a rate card for
5 that site, that's what they want. Also, DoITT
6 acknowledges the advertising companies want, in
7 effect, digital advertising, which is done over the
8 internet, which allows the advertisers to display,
9 like radio stations, pick out different time slots,
10 so in effect, we're going to have a different model
11 for maximizing revenue and so the answer is there's
12 going to be robust competition between advertisers
13 to get the best price quickly. So I dispute the
14 monopoly model for, in effect, obtaining that
15 price. I think there are other ways to do it.

16 CHAIRPERSON WEPRIN: Okay, great. Mr.
17 Mastroianni, you wanted to show us a couple of
18 slides. Then I want to have Karen Koslowitz, a
19 former Council Member I guess for those areas you
20 mentioned, ask some questions, so could... is that
21 a quick...

22 [crosstalk]

23 RAYMOND MASTROIANNI: Yes.

24 [crosstalk]

2 CHAIRPERSON WEPRIN: So there's...
3 okay.

4 [crosstalk]

5 RAYMOND MASTROIANNI: One last
6 comment...

7 [crosstalk]

8 CHAIRPERSON WEPRIN: Okay.

9 [crosstalk]

10 RAYMOND MASTROIANNI: About monopoly.
11 Does it just apply to us? Couldn't they make the
12 same argument that this would apply to the cable
13 companies? Whoever bids the most gets it and now
14 they'll control an entire market and can bring
15 advertising rates up. They can bring subscriber
16 rates up. No, there's something else and we're not
17 sure what it is, but it can apply to any industry.
18 It...

19 [crosstalk]

20 CHAIRPERSON WEPRIN: Mm...

21 [crosstalk]

22 RAYMOND MASTROIANNI: It doesn't make
23 sense.

24

25

2 CHAIRPERSON WEPRIN: 'Kay, show us what
3 you got there behind curtain number one. Okay.
4 Alright. [background voices]

5 RAYMOND MASTROIANNI: Thank you. You
6 know, when you think of payphones you know, who's
7 using payphones today? But if you take a look
8 at... this is first-generation cell phone or a
9 second-generation cell phone. The way you
10 communicated when you used this phone is you made
11 phone calls and you had voice communication, but as
12 the technology evolved, when you got to the area
13 where the palm pilot came out and more importantly,
14 the blackberry, your pattern of communicating
15 changed. Instead of... if you made 50 phone calls
16 a day 15 years ago using this device, 'cause that's
17 all you could do, very similar to a payphone where
18 we've been stuck. Here, you may have been making
19 40 or 50 phone calls, but also started to make more
20 text messages so the question today... this is this
21 one over there is. So the question today if you
22 move forward and you see what Apple has done with
23 iPhone, we've been stuck. The payphone has been
24 stuck back here, so we're competing with this
25 technology. We have been allowed by the agency to

2 turn these phones into Smartphones and we should
3 have done this 10 years ago and actually we
4 proposed this 10 years ago. These are screen pages
5 from 20 access points that we have, free Wi-Fi, and
6 if you look at the amount of communication that's
7 going on in addition to the phone calls, it's very
8 similar to your Smartphone. These phones are no
9 different now. Now they're finally liberated. So
10 you'll see in one week more than a quarter of a
11 million people pass by. They were weak signals.
12 We didn't distribute an IP address. 26,000 people
13 out of 20... the you know, 20 locations stood
14 around for more than five minutes and then we
15 delivered an IP address where almost 2,300 people
16 connected and went on Netflix or Google video; we
17 have all the statistics. So these phones have not
18 been able to evolve and they should. You know,
19 when I spoke before and I told you we invested \$25
20 million. Here's some loose sites from ING. Can I
21 bring these up? [background voice] Okay, so it's
22 not as though we're just... when I say \$25 million
23 I mean it. These are... this map shows where all
24 of our locations have energy, so in order to put a
25 kiosk up you have to trench the roadway to go into

2 the communication manhole system, but then if you
3 want electricity, you need to build another trench
4 into Con Ed's manhole system. We did that and why
5 would someone want to take this away? We can get
6 Wi... by the way, we can get Wi-Fi up quickly. If
7 the Mayor said we want 300 access points or free
8 Wi-Fi, we can get it done in months. As a matter
9 of fact, we have... Telebeam has more electrified
10 locations than all of the other franchisees
11 combined.

12 In 2003, I approached the agency and I
13 said, "Listen, we'd like to install Wi-Fi
14 hotspots," and I was told that the existing
15 authorizing resolution didn't permit... didn't give
16 them the authority to allow us to install Wi-Fi
17 locations. So we went to the Council and we
18 explained. Look, these... our competitors at the
19 time were the wireless devices. We needed to
20 evolve and to compete with them, so the Council had
21 hearings, we spoke and they passed it. They
22 amended an authorizing resolution, which allowed
23 wireless. The public service to be provided
24 pursuant to this resolution shall be public
25 communication service, including, but not limited

2 to public pay telephone service, web telephones,
3 public internet terminals, Wi-Fi access points and
4 other telecommunication services to the extent
5 permitted by law. We did this 12 years ago. How
6 many people... how many kids would've been able to
7 do their homework by accessing the internet. How
8 many unemployed... 'cause this is what the Mayor I
9 believe feels deeply in his heart. Why didn't they
10 allow us to do this 12 years ago? The Mayor ended
11 up vetoing this and the Council overturned his
12 veto.

13 ROBERT BRILL: Mayor Bloomberg.

14 RAYMOND MASTROIANNI: Mayor Bloomberg.

15 These are upside down. We've been talking
16 innovation and this is important. If you have one
17 company, there's no need for them to innovate and
18 you can't regulate innovation, by the way. They're
19 going to try to cover it that way; oh, we'll just
20 regulate innovation. It doesn't work that way. So
21 we had Commissioner Menchini and General Counsel
22 Cangemi, sometime in 2002, come in and we
23 demonstrated some technology. This is a Philips
24 camera with a built-in web server and you could
25 actually use operating zoom lenses on this thing.

2 So we installed one of these in a kiosk in Park
3 Avenue South, we had them come in and the idea was
4 would this be something that would be useful for
5 First Responders. It wasn't surveillance. If
6 someone dialed 9-1-1 and there was an incident
7 going on down on Park Avenue South, at least
8 someone at dispatch can see what was going on and
9 alert patrol who was on their way.

10 CHAIRPERSON WEPRIN: It'd probably
11 eliminate... limit false alarms as well I would
12 think.

13 RAYMOND MASTROIANNI: Yes. [background
14 voice] One day, I was reading a blog and there was
15 a company called Tesla that was about to create
16 this roadster and it was an electric car. So the
17 next day I came into the office and we were talking
18 about it and we said you know something? We have
19 this infrastructure, all this electricity. This is
20 really underutilized. Wouldn't this be something
21 that the city should at least... if electric cars
22 are really coming, isn't this something that they
23 should at least consider? And this was in the
24 middle of the Mayor Bloomberg's congestion pricing
25 initiative and we understood it. So we went and we

2 bought two electric pick-up trucks, an electric
3 four-door sedan, Lamborghini green, and a micro-
4 car, all electric and we said let's just see if
5 this works. So we provided outlets strategically
6 at a bunch of our locations and said can our guys
7 go and service the phones? And it worked, so you
8 know, these weren't just dreams. We actually tried
9 it, invented it and actually implemented it. So we
10 called up... Van Wagoner was our media rep at the
11 time and we called them up and said, "We have an
12 idea. Come over. We want to show you." So they
13 came over. When we opened up our garage, the fleet
14 of these electric cars came out and they were like
15 oh my God, we get it. So in conjunction with Van
16 Wagoner, we actually developed... look, this is a
17 car charging station, fully built. It has a
18 payphone, an internet terminal and car charging
19 capabilities. They weren't sure if electric cars
20 were coming at the time. But I'm going to close
21 this now. I know you want to move on.

22 CHAIRPERSON WEPRIN: Yeah, if you can
23 wrap up just as soon as you can, that'd be great.

24 RAYMOND MASTROIANNI: Okay, so prior
25 to... when there was a monopoly, basically there's

2 a small telephone booth underneath this thing and
3 the advertising companies came and they put these
4 ad panels on the side of these telephone booths to
5 sell advertising. They cared nothing about design
6 or there was no engineering that went into this.
7 So...

8 CHAIRPERSON WEPRIN: [interposing] Or
9 phone service, for that matter.

10 RAYMOND MASTROIANNI: So if you look at
11 this, you'll see that there's graffiti on this
12 enclosure. What does it matter? This is an
13 aluminum material, anodized aluminum. It's painted
14 bronze and when kids come along and they mark it
15 up, in order to get that paint off or the marks off
16 you have to use paint remover, so you end up taking
17 off all of the bronze surface on this enclosure and
18 because this thing wasn't engineered from the
19 bottom up, these kiosks used to get drunk and lean
20 forward. So what did the monopoly do? They came
21 and they put poles underneath to keep them up and
22 look sober.

23 CHAIRPERSON WEPRIN: 'Kay.
24
25

2 RAYMOND MASTROIANNI: So when we got
3 into the business, we could have used inexpensive
4 enclosures. Should I just put this here?

5 CHAIRPERSON WEPRIN: [off mic] Yeah,
6 sure.

7 RAYMOND MASTROIANNI: It was made out
8 of stainless steel intentionally. We knew what
9 it's like to operate these things and you can't
10 have a painted surface. Stainless steel is so much
11 more expensive, the material itself, than anodized
12 aluminum; it's more expensive to work with and we
13 also knew when we designed this thing, each of
14 these panels has its own support, but more
15 importantly, this section right here we knew at
16 some point could be pulled out and you could put in
17 an interactive terminal. We thought about this
18 years ago when we did this. So the notion that
19 this has got to be one provider doesn't make any
20 sense and it's not true.

21 This is the last slide. This is
22 supposed to aesthetic-free. What we've tried to
23 do... so there was no design. It wasn't meant for
24 a design statement, but merely to say okay, if
25 you're going to make this thing smaller, have

2 digital panels instead of the static ones so that
3 the advertising companies can change the clock
4 remotely. Maybe this is something that it would
5 look like, but up on top there are cameras. Up on
6 top there are antennas and radios for Wi-Fi and
7 small cells, vaults for metering for Con Ed in case
8 a car charging station wants to get connected down
9 the block. If there's a Muni Meter on a block,
10 shouldn't someone be able to print a ticket from
11 over here instead of duplicating efforts?

12 And lastly, I don't think the Mayor...
13 you know, when we listened to him, I would never
14 think that he would not at least consider the faces
15 behind companies before putting someone out of
16 business. So if you'll look at... there's 19 of us
17 here. Many of us... you know, I've been with the
18 company 30 years; Henry's been with the company 30
19 years; Bob 18; Roger 15 years. You know, you're
20 putting people out of business if you do this, but
21 more importantly, you know, it won't be a pleasant
22 Christmas this year and that's their families. so
23 it's not just us. it's our kids.

24 [crosstalk]

25 CHAIRPERSON WEPRIN: 'Kay.

2 RAYMOND MASTROIANNI: Thank you very
3 much.

4 CHAIRPERSON WEPRIN: Point delivered,
5 got it. I'd like to call on Council Member
6 Koslowitz, who has a question for you gentlemen
7 and...

8 COUNCIL MEMBER KOSLOWITZ: [off mic] I
9 mean it's more of a statement.

10 CHAIRPERSON WEPRIN: Okay, statement
11 away.

12 COUNCIL MEMBER KOSLOWITZ: I'm sitting
13 here and I almost can't believe my ears. I was
14 here for Local 68. I voted for Local 68. I can't
15 believe that the administration, this one or any
16 other administration, would want one person to
17 handle all this business. I cannot believe it. We
18 have had experience with this; CityTime and many
19 other things. I remembered street furniture. We
20 sat with at that time Mayor Giuliani and his team
21 and they picked a company and to this day, the
22 company has never done what they said they were
23 going to do. I personally have fights with them
24 because I have a newsstand that had to be moved
25 because of construction. I think it's a shame and

2 when they say they're going to save money with a
3 company, no, they're going to lose money. They're
4 going to lose money because all these people will
5 be out of business and the money they spend in New
6 York City will be gone, so there's no money saved.
7 Competition, that's what this is all about. We
8 have to have competitions. They allowed street
9 vendors to be on the same block as restaurants, so
10 why can't we have many companies doing this? I'm
11 sitting here and I'm just like astounded. From
12 past experience, that counts. We have to look back
13 and see what the history has been when one person
14 or one company does the same thing throughout the
15 City of New York when we have so many other
16 companies that do that same business. Let's give
17 people a chance, and that's what I have to say.

18 CHAIRPERSON WEPRIN: Thank you, Council
19 Member Koslowitz. Gentlemen, I'm going to move
20 onto another panel. I just want to end with you
21 know, the point that to me, and Karen sort of was
22 emphasizing, that is most compelling is this idea
23 that competition leads to improvements in
24 technology and we are talking about a 15-year
25 contract where one operator is going to have a 15-

2 year contract and they're going to be making money
3 on advertising so they can keep their advertising
4 updated, but the services to the public they have
5 really no incentive to improve and this is
6 especially troubling to me 'cause of the
7 technology. Your chart on those cell phones you
8 know, the life of those cell... how they've
9 evolved over the years so quickly. I still have
10 the one in the middle somewhere, truthfully, but
11 the fact that I mean technology every day I'm
12 amazed by something else my six-year old can do on
13 the computer that I don't have any idea what she's
14 doing, but I mean just amazing how this technology
15 is changing. We're talking about a 15-year
16 contract in a technology that is going to change
17 tomorrow and needs to be updated. It almost...
18 that's why it makes us... we mandate that we have
19 competition just to make sure it keeps up with the
20 technology. Otherwise, we're going to be worse off
21 than we are now, which are phone booths that have
22 went out of favor somewhere in the middle of a
23 contract and we're going to end up with phone
24 booths that are long you know, already out of...
25 the technology has gone past them and they're no

2 longer state-of-art immediately, within weeks,
3 months and maybe a year. They'll be useless to the
4 public and all they'll be is advertising space, so
5 we'll be worse off than we are now in my mind. So
6 I mean I appreciate your testimony and I don't
7 understand you know, exactly why DoITT is insisting
8 on doing it this way. Their arguments I think can
9 all be refuted, the ones they made here and I just
10 don't understand. Stanley Shor, one of the things
11 he did say... he didn't say we're doing a monopoly.
12 He said, "No, we're only hiring... having one. We
13 could always add one later." But I don't think
14 they have any intention of adding any more. I said
15 to him, "Why not get six and get rid of one later?"
16 Play like "Survivor," [laughter] where after two
17 years, whoever's the worst provider gets off the
18 island. I mean at least that would... as a
19 consumer representative; I represent consumers; I
20 want what's best for my constituents and what works
21 the best and having more people out there trying to
22 compete with each other so the Joneses aren't ahead
23 of me and that Telebeam or whoever it is is not
24 doing a better job than I am, I'm going to keep
25 improving that technology. So I do appreciate your

2 testimony here today. I am disappointed DoITT is
3 not here, but I mean I'd love to see them modify
4 this RFP. They just modified the date of
5 submission to say you know what? We're going to
6 take more than one because that's better for the
7 consumer in my mind. Thank you, gentlemen. We're
8 going to move onto our next panel. Hope you all
9 survived. I'd like to call up Jeremy Schneider is
10 it; Lester Shafran and is it Michelle Nelson?
11 [background voices] You... excuse me? Okay, you're
12 passing, okay. Okay well, thank you, Ms. Nelson.
13 Alright, so these... we have Mr. Schneider. Oh,
14 there you are, okay, and Mr. Shafran, okay.
15 Whenever you're ready, gentlemen. Again, I
16 reiterate the need to state your name whenever you
17 speak. I don't know if I enforced it as well as I
18 should have there and but thank you, panel, even
19 those who traveled from Washington DC didn't as
20 many questions as other people, but thank you.

21 LESTER SHAFRAN: Thank you, Chairman...

22 CHAIRPERSON WEPRIN: [interposing] Yes.

23 LESTER SHAFRAN: Weprin and Council
24 people. Thank you for the opportunity. I'm going
25 to make a very brief, general statement.

2 My name is Lester Shafran. I represent
3 the Independent Payphone Association of New York.
4 In that role, I've been in there since 1994, some
5 eight years after the federal courts called for the
6 divestiture of AT&T, calling it a monopoly and
7 setting the stage for competition. Thus, the
8 independent operators developed and formed and
9 actually sited themselves on the streets of the
10 City of New York. They were small companies and
11 large companies and in 1996, the Federal Telecom
12 Act was passed again, calling for open competition
13 in Telecom. The New York City franchise started in
14 1995 and onward, called for open competition, but
15 not now and you've heard this before and you've
16 heard it very, very well said. This RFP seeks a
17 monopoly, one winner, who has to put up a \$20
18 million bond. I mean just think of that, a \$20
19 million bond. How many companies can really do
20 that? The RFP doesn't set forth a formula defining
21 fair market value and Ray talked to that point. No
22 formula. What is fair market value? These people
23 capitalize; maintain their phones on the streets of
24 the City of New York for these... at least a
25 decade, a decade and a half. It treats these

2 operators as if they didn't meet the needs and
3 standards of New York City; protecting health and
4 welfare; free 9-1-1; free 3-1-1 and think of the
5 days when you saw on TV the lines at public
6 payphones during Hurricane Sandy when 9-1-1, they
7 were the only operating Telecom systems in New York
8 City. Think of the loss of revenue; loss of jobs
9 and Ray talked to that point; very, very well said.
10 The small guys here have no chance. This is just
11 not fair and in sum, we are opposed to this
12 process. Thank you.

13 CHAIRPERSON WEPRIN: Mr. Shafran, I
14 have to ask...

15 LESTER SHAFRAN: [interposing] Sure.

16 CHAIRPERSON WEPRIN: What model
17 handheld is that that you're using to read your
18 testimony from? [laughter] I was going to say oh,
19 that's a pad and paper I see, a pen and paper
20 obviously.

21 LESTER SHAFRAN: And it was so easy. I
22 did it on the subway coming down.

23 CHAIRPERSON WEPRIN: Thank you. You're
24 old school, as they say. Mr. Schneider.

2 JEREMY SCHNEIDER: Hi, I am Jeremy
3 Schneider. I'm from the Alliance for Downtown New
4 York. I'm our Chief Technology Officer. Thank you
5 very much for allowing me to speak here today. I'm
6 going to focus on a little bit different angle.
7 I'm going to focus on the Wi-Fi aspect of the RFP
8 and some of the parts that we're interested in as
9 the Alliance for Downtown New York.

10 We are the business improvement
11 district for Lower Manhattan, so that covers the
12 area south of Chambers Street. Our mission is to
13 provide service, advocacy, research and information
14 to advance Lower Manhattan as a global model of the
15 21st Century Central Business District for
16 businesses, residents and visitors.

17 We have long believed in the importance
18 and the wide-ranging benefits of free public access
19 to wireless connectivity. In fact, in 2003, we
20 launched a free public Wi-Fi initiative that was,
21 at the time, the city's most extensive. From the
22 beginning of the program through 2010, we had more
23 than 270,000 connections to our network that
24 consisted of maybe seven hotspots in Lower
25 Manhattan. That level of use was just the

2 beginning, however. Over the last two years alone,
3 we have seen almost 500,000 connections in our
4 network in Lower Manhattan.

5 One reason for this growth is our
6 recent partnership with the EDC to expand our Wi-Fi
7 network in Lower Manhattan along Water Street
8 between Whitehall and Fulton Streets, on nearby
9 streets and along the East River waterfront and
10 piers. I hope you get a chance to enjoy that on
11 these nice summer days that are finally happening.

12 We are fortunate to be able to take
13 advantage of this opportunity and I believe it is a
14 great example of how a public-private partnership
15 can benefit everyone. In fact, in the last 24
16 hours; I just checked this before we came over
17 here, there were about 2,700 people already
18 connected to our Water Street wireless corridor.

19 The demand to stay connected to high-
20 speed, efficient networks is growing fast and it is
21 a pillar of our social and economic lives. Whether
22 you are a worker moving from the curb to your cube,
23 a visitor needing to stay in touch back home or a
24 resident on your way to the market checking on
25

2 which store has the best deal, connectivity is an
3 essential tool.

4 Altogether, our network provides
5 approximately 1.2 million square feet or more than
6 27 acres of free coverage. This now includes 18
7 parks and open spaces where free Wi-Fi is available
8 and we have a lot more locations along the way.

9 Last month, we began working on another free
10 wireless corridor in Lower Manhattan. This one is
11 going to be on Broadway from Bowling Green to City
12 Hall Park. As the demand for this utility grows,
13 we are delighted to hear about the administration's
14 commitment to expand access to free public Wi-Fi,
15 whether it means using existing telecommunications
16 infrastructure, including payphones or other city
17 property.

18 As we look at possibilities that are
19 both promising and extensive, there are a few
20 important points to consider. First, with any Wi-
21 Fi network, the work doesn't end with the network's
22 completion. There are repairs and maintenance and
23 recurring annual expenses. It's important for any
24 free Wi-Fi service to remain dependable and
25 reliable long after the installation and the

1 launch. Second, and perhaps most important, as the
2 city considers making this commitment, I believe it
3 is important to consult everyone who already
4 provides free public Wi-Fi, whether public or
5 private. There are dozens of bids, other community
6 organizations that provide free Wi-Fi throughout
7 the city, not just in Lower Manhattan. The city
8 should look at what's already in place and come up
9 with a rational plan that may involve existing
10 networks in order to achieve optimum coverage and
11 operational efficiency.
12

13 As the city works through this process,
14 the Downtown Alliance will continue to provide and
15 expand free public Wi-Fi in Lower Manhattan. As we
16 grow our connectivity, it would be enormously
17 advantageous to us to be able to use city property,
18 such as light poles, signal poles and utility poles
19 to provide free Wi-Fi. Traditionally, the Alliance
20 has paid for the Wi-Fi equipment; we pay for the
21 installation; we pay for the maintenance; we pay
22 for the internet service, while obtaining
23 permission from various property owners to install
24 the devices on their property. Though I fully
25 appreciate the rationale behind the city's

2 telecommunication franchise fees, I believe that
3 anyone offering a free public amenity without
4 making a profit, like the Downtown Alliance and
5 other bids, should be exempted from those fees.
6 This would significantly reduce operating costs and
7 enhance and accelerate our ability to provide free
8 Wi-Fi, along with obviously the ability of
9 everybody else who's in the Wi-Fi business of
10 providing free interconnected service. It would,
11 of course, also greatly benefit the residents,
12 workers and visitors in Lower Manhattan.

13 We think this is a very exciting time
14 and right now, we have a phenomenal opportunity. I
15 hope we can work together to help all New Yorkers
16 get connected and make citywide free Wi-Fi a
17 reality. Thank you very much.

18 CHAIRPERSON WEPRIN: Thank you very
19 much, Mr. Schneider. How is our friend, Jessica
20 Lappin, doing?

21 JEREMY SCHNEIDER: She is wonderful.

22 CHAIRPERSON WEPRIN: Good. We agree,
23 we agree. Well, I appreciate you coming down. Let
24 me ask this question. I don't want to get you in
25 trouble, so I'll ask it of Mr. Shafran. Just the

2 issue of competition, and Mr. Schneider talks about
3 the maintenance that's required, talks about you
4 know, sort of the changes that need to be made as
5 you go along. Do you think that it is helpful to
6 have multi-franchisees in the process or do you
7 think it's more effective just having one?

8 LESTER SAFRAN: No question about it,
9 competition brings out the best in all of us. It
10 puts one company against another, against another,
11 against another and they all strive to come out
12 with the best product in the most efficient way to
13 serve the public in this particular case and
14 probably at the best cost. Competition is why the
15 United States of America is number one in the world
16 and why our military with all the technology keeps
17 on growing and growing. Think of the various
18 manufacturers and providers. It applies... look at
19 the tech field. Look how that's exploded and Ray
20 showed you the plaque with the evolution of the
21 cell phone. I mean it's just... it's just obvious.
22 The answer is obvious.

23 CHAIRPERSON WEPRIN: Mm-hm. Mr.
24 Schneider, I'm going to... as your attorney, I'm
25 going you not to answer of my questions, so

2 [laughter] I just wanted to say this about what you
3 said. We think it's great you're doing that and
4 the great work you're doing for Downtown and I also
5 am very excited that the city is going to be doing
6 this throughout the city and that the Wi-Fi...
7 having a Wi-Fi network is essential to the City of
8 New York and I think it's great that that's going
9 to happen. That's the great news about this. I
10 still have this struck in my craw, the idea of how
11 it's being done and... that's the problem. Oh, I
12 didn't even see there. I know Jimmy Vacca is here,
13 but he can't stay because he is solving all the
14 budget problems and Vinnie Ignizio as well, so...
15 [background voices] Thank you. Well, that's right.
16 Well... well, unfortunately I apologize if we did
17 this right in the middle of budget season, but it
18 has made it difficult. So anyway, so thank you for
19 your testimony and the great work you're doing down
20 there and please send our regards to Jessica
21 Lappin. Gentlemen, I appreciate you both coming
22 down and Karen Koslowitz is too because I don't
23 want to get in trouble. Thank you. And so really
24 that's all we have to testify at this hearing. I
25 do appreciate everybody coming down. I know this

2 is a busy week. You know, I know people are
3 listening to what we have to say today. I mean I'm
4 just trying to look at this from a consumer's point
5 of view; that it concerns me that this is going to
6 be a sole franchisee operating this; that it does
7 cause problems. I would love to see the RFP opened
8 up and expanded. Like I said, start with a
9 handful; you don't have to... not everyone who
10 applies and I'm not saying you need to keep
11 everybody who's there now where they are, but to
12 come up with a new system I think makes sense and
13 that's my two cents on that topic. So thank you
14 very much for coming and I thank everyone who
15 testified. Is there someone else who was here to
16 testify? [background voices] Well okay, that's
17 fine. Where are you from? [background voice]
18 Okay, I... we'd be delighted to accept your
19 testimony and we'll be in touch with you if we need
20 to. Is that okay? Thank you very much. Okay, so
21 with that in mind, thank you all very much for
22 coming. I apologize. We are running around from
23 meeting to meeting today, so we're going to end it
24 here and I thank you all for coming. Okay and with
25 that, the meeting is now adjourned.

2 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Date: 06/24/2014